



Senate Committee On
COMMUNITY AFFAIRS

Michael S. "Mike" Bennett, Chair
Mike Haridopolos, Vice Chair

Meeting Packet

Tuesday, February 7, 2006

9:00 a.m. – 11:00 a.m.

Room 401, Senate Office Building

***(Please bring this packet to the committee meeting.
Duplicate materials will not be available.)***

E X P A N D E D A G E N D A

COMMITTEE ON COMMUNITY AFFAIRS

Senator Bennett, CHAIR
Senator Haridopolos, VICE-CHAIR

DATE: Tuesday, February 7, 2006
TIME: 9:00 a.m. -- 11:00 a.m.
PLACE: Room 401, Senate Office Building

(MEMBERS: Senators Clary, Geller, Hill, Lawson, Pruitt and Villalobos)

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 0980 Alexander (Identical H 0431)	Electrical Substations; provides legislative intent; provides that electrical substations shall be considered permittable use in all land use categories & zoning districts; prohibits local government from requiring permits or other approvals for vegetation management & tree trimming within established electric power line right-of-way. Creates 163.3206, .3208.	
		CA 01/24/06 Temporarily postponed CA 02/07/06 CU	
2	SB 0092 Fasano (Similar H 0143)	Officer Malcolm Thompson Act; revises provisions re benefits payable for total & permanent disability for certain Special Risk Class members of FRS who are injured in line of duty; authorizes reemployment of person who retired with in-line-of-duty disability benefits by employers not participating in state-administered retirement system & employer participating in said retirement system after 1 calendar month, etc. Amends 121.091.	
		CA 02/07/06 GO WM	
3	SB 1032 Margolis (Similar H 0451)	Affordable Housing for Elderly; reduces percentage of loan amount which sponsor of housing community for elderly must commit to match in order to receive loan under State Apartment Incentive Loan Program. Amends 420.5087.	
		CA 02/07/06 TA	
4	SB 1048 Sebesta (Compare H 0401)	Affordable Housing; repeals provision re certain powers of Florida Housing Finance Corporation; revises population numbers for categories used to allocate funds to counties under State Apartment Incentive Loan Program; increases percentage of state or local median income below which personal or family income must fall in order to purchase home under Fla. Homeownership Assistance Program, etc. Repeals 420.37; amends 420.503, .5087, .5088, .9075.	
		CA 02/07/06 TA	

E X P A N D E D A G E N D A

COMMITTEE ON COMMUNITY AFFAIRS

DATE: Tuesday, February 7, 2006

TIME: 9:00 a.m. -- 11:00 a.m.

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 1088 Siplin	Three Kings Day; designates January 6 as "Three Kings Day" & authorizes local governments to issue proclamations commemorating occasion. Creates 683.33. CA 02/07/06 GO	
6	SB 1112 Bennett	Licensing; requires that state agency include citation to applicable rule when giving notice of its decision to issue or deny license; requires county & municipality to give written notice of its decision to issue or deny license; requires that notice include citation to applicable ordinance; requires that notice include citation to applicable ordinance. Amends 120.60; creates 125.022, 166.033. CA 02/07/06 GO	
Consideration of proposed committee bill (Interim Project 2006-108 - Growth Management Glitch Bill):			
7	SPB 7082	Growth Management; expands membership of Century Commission for Sustainable Florida; deletes obsolete provisions re High Growth District Capital Outlay Assistance Grant Program; provides additional sum to State Transportation Trust Fund for specified purposes; revises prerequisites to establishment & funding of High Growth District Capital Outlay Assistance Grant Program; appropriates contingent funds, etc. Amends FS. CA 02/07/06	
8	Presentation by Kathy Baughman McLeod, Government Affairs Consultant, Florida Humanities Council.		
9	Presentation by Dr. Gary Mormino, Professsor of Florida Studies, University of South Florida.		

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL: SB 980

INTRODUCER: Senator Alexander

SUBJECT: Local Government Land Development Regulation

DATE: February 6, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin <i>smh</i>	Yeatman <i>AY</i>	CA	Pre-meeting
2.			CU	
3.				
4.				
5.				
6.				

I. Summary:

This bill preempts local governments with respect to the siting of electrical substations and vegetation management and tree trimming within an established right-of-way for an electric power line. Specifically, it provides that electrical substations shall be a permissible use in all land use categories and zoning districts. Local governments retain the authority to enact reasonable setback, landscaping, buffering, or screening standards for substations.

Also, local governments may not require a permit or other approval for vegetation management and tree trimming within an established right-of-way for an electric power line. At the request of a local government, utility companies are required to meet with the local government to discuss the utility's vegetation maintenance plan.

This bill creates sections 163.3206 and 163.3208 of the Florida Statutes.

II. Present Situation:

Comprehensive Planning and Zoning

The Local Government Comprehensive Planning and Land Development Regulation Act, ss. 163.3164 – 163.3247, F.S., requires local governments to plan for future development and growth through the adoption and amendment of their comprehensive plans. Local governments enjoy broad constitutional and statutory powers to plan for and regulate land use. A local government's comprehensive plan and land use classifications dictate the allowable land uses for each parcel.

Each local government is required to adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.¹ Section 163.3164(23), F.S., defines the term “land development regulations” as ordinances enacted by local governments relating to any aspect of development, including zoning, rezoning, subdivision, building construction, sign regulations, or any other regulations controlling land development. A substantially affected person, as defined in ch. 120, F.S., may challenge a land development regulation on the basis that it is inconsistent with the local government’s comprehensive plan.² Citizens also enjoy standing to enforce a local comprehensive plan through challenging the consistency of a development order with that plan.³

Electrical Power Plant and Transmission Line Siting

Part II of ch. 403, F.S., governs electrical power plant and transmission line siting. It sets forth a process for applying for electrical power plant site certification with the Department of Environmental Protection. Within 90 days after the department receives a complete application, a designated administrative law judge holds a land use hearing in the county of the proposed site.⁴ The sole issue for determination at the hearing is whether the proposed site is consistent and in compliance with the jurisdiction’s existing land use plan and zoning ordinances.⁵ For purposes of this application process, an associated transmission line may include any proposed terminal or intermediate substations or substation expansions at the applicant’s option.⁶ Electrical substations for distribution lines are typically sited as a special use or conditional use through the local government planning and zoning process. The terms “special use” or “conditional use” refer to those land uses that are not permitted outright under a local government’s zoning code, but may be approved by the zoning board.

Vegetation Management and Tree Trimming in a Utility Right-of-Way

Vegetation management plans are important to electric utility providers in order to avoid tree-related outages. Depending on the species of tree, the management plan will establish a schedule and an allowable distance for trimming. Vegetation management may also include the removal of nuisance trees, the use of growth retardants, and selective directional trimming to maintain a balanced canopy. There are national standards for tree trimming that have been developed by the International Society of Arboriculture and the National Arborist Association. Another concern with vegetation in a right-of-way is the fast-growing invasive species that may result in power outages.

Local governments often have tree ordinances that specify the species that must be used in a given area depending on the land use. Some local governments require a permit prior to trimming certain trees. Electric utility providers may be subject to these tree ordinances or permit requirements.

¹ S. 163.3202(1), Fla. Stat. (2005).

² S. 163.3213, Fla. Stat. (2005).

³ S. 163.3215, Fla. Stat. (2005).

⁴ S. 403.508(1), Fla. Stat. (2005).

⁵ S. 403.508(2), Fla. Stat. (2005).

⁶ S. 403.503(12), Fla. Stat. (2005).

III. Effect of Proposed Changes:

Section 1 creates s. 163.3206, F.S., to provide that electrical substations shall be a permissible use in all land use categories and zoning districts. Local governments may still enact reasonable setback, landscaping, buffering, or screening standards for substations. It also provides legislative intent regarding the siting of electrical infrastructure.

Section 2 creates s. 163.3208, F.S., to prohibit a local government from requiring a permit or other approval for vegetation management and tree trimming within an established right-of-way for an electric power line. At the request of a local government, the electric utility shall meet with the local government to discuss the utility's vegetation maintenance plan, including trimming specifications and management practices.

Section 3 provides the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under this bill, an electric utility is no longer required to obtain a permit or other approval from local government for vegetation management and tree trimming within an established right-of-way for an electric power line.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

Bill No. SB 980



650230

CHAMBER ACTION

SenateHouse

COMMUNITY AFFAIRS

DATE: 1-23-06
TIME: 8:16 A.M.

The Committee on Community Affairs (Bennett) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause,

and insert:

Section 1. Section 163.3207, Florida Statutes is created to read:

163.3207 Substation approval process.--

(1) It is the intent of the Legislature to maintain, encourage, and assure adequate and reliable electrical infrastructure in the state. It is essential that electric infrastructure be constructed and maintained in various locations in order to ensure the efficient and reliable delivery of electric service.

(2) Electric substations are a critical component of electric transmission and distribution. Local governments may adopt and enforce reasonable land development regulations for new substations addressing only setback, landscaping, buffering, or screening standards. In power line aerial access



1 points to the substation equipment, vegetation shall not be
2 required to have a mature height in excess of 14 feet.
3 Substations shall be a permittable use in all land use
4 categories and zoning districts within a utility's service
5 territory; however environmentally sensitive locations,
6 including conservation areas, should be avoided to the maximum
7 extent practicable. If a local government has not adopted land
8 development regulations with reasonable standards for
9 substation siting, a substation shall be permitted of right
10 upon meeting the following standards:

11 a. In non-residential areas, the substation must
12 comply with the setback and landscaped buffer area criteria
13 applicable to other uses in that district.

14 b. In residential areas, a setback of up to 100 feet
15 between the substation property boundary and permanent
16 equipment structures shall be maintained as follows:

17 (1) For setbacks between 100 feet and 50 feet, a
18 landscaped area having trees and shrub material with a
19 security fence around the substation equipment shall be
20 installed, creating an open, green park-like setting.

21 (2) For setbacks between 25 feet and 49 feet, an
22 8-foot buffer wall or 8-foot fence with landscaping shall be
23 installed around the substation.

24 (3) For setbacks of less than 25 feet, a decorative
25 wall or facade at least 10 feet in height shall be installed
26 around the substation, with exterior landscaping.

27 Section 2. Section 163.3209, Florida Statutes, is
28 created to read:

29 163.3209 Electric power line right-of-way
30 maintenance.--

31 After a right-of-way for any electric power line has

Bill No. SB 980



650230

been established, no local government shall require any
permits or other approvals for vegetation management and tree
trimming, within said established right-of-way. Upon the
request of the local government, the electric utility shall
meet with the local government to discuss the utility's
vegetation maintenance plan, including the utility's trimming
specifications and management practices.

Section 3. This act shall take effect upon becoming a law.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause,

and insert:

A bill to be entitled

An act relating to energy reliability; creating
s. 163.3207, F.S.; relating to substation
approval process; creating s. 163.3209, F.S.;
relating to electric power right-of-way
maintenance; providing for an effective date.

Bill No. SB 980



322150

**Amendment 1 to
Amendment 650230**

CHAMBER ACTION

Senate

House

**Consideration of
this amendment
requires a 2/3 vote
of members present**

COMMUNITY AFFAIRS

**DATE: 1-23-06
TIME: 4:22 P.M.**

The Committee on Community Affairs (Lawson) recommended the following **amendment to amendment** (650230):

Senate Amendment (with title amendment)

On page 2, lines 5-7, delete those lines

and insert: territory, except those lands designated as environmentally sensitive or conservation lands on the future land use map. If a local government has not adopted land

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 3, line 20, after the first semicolon

insert:

providing an exception;

Bill No. SB 980



930930

CHAMBER ACTION

Senate

**Amendment 1 to
Amendment 650230**
House

**Consideration of
this amendment
requires a 2/3 vote
of members present**

COMMUNITY AFFAIRS
DATE: 1-23-06
TIME: 4:23 P.m.

The Committee on Community Affairs (Lawson) recommended the following **amendment to amendment** (650230):

Senate Amendment

On page 2, line 18, after the word "having"

insert: native, non-invasive

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL: SB 92

INTRODUCER: Senator Fasano

SUBJECT: Retirement/Officer Malcolm Thompson Act

DATE: January 30, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vickers <i>Ran</i>	Yeatman <i>AY</i>	CA	Pre-meeting
2.			GO	
3.			WM	
4.				
5.				
6.				

I. Summary:

This bill revises in-line-of-duty disability standards and post-retirement reemployment requirements for certain members of the Florida Retirement System (FRS) Special Risk Class. Specifically, the bill provides that a Special Risk Class member who is a law enforcement officer, correctional officer, correctional probation officer, firefighter, emergency medical technician, or paramedic is considered totally and permanently disabled if he or she has a job-related injury that causes physical or mental impairment and is unable to perform the duties of *his or her position*, unless proven otherwise by the program administrator. Under current law the member must be prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee (i.e., engaging in *any* gainful employment). The bill effectively provides a less restrictive standard for determining total and permanent in-line-of-duty disability and shifts the burden of proof from the employee to the administrator.

The bill would also relax post-retirement reemployment restrictions for affected Special Risk Class members who qualified for and elected to take an in-line-of-duty disability retirement under the bill's provisions. Any such retiree could return to employment covered under the FRS after 1 calendar month of disability retirement, provided he/she did not resume employment in the *same position* held when injured.

This bill substantially amends section 121.091, Florida Statutes. This bill creates unnumbered sections of the Florida Statutes.

II. Present Situation:

All state and county employees are compulsory members of the FRS, and as of June 30, 2005, about 151 Florida cities¹ were covering firefighters, police, and/or general employees under the FRS. On that date, there were also 190 independent special districts² with members in the FRS. As of June 30, 2005, state employees (including university employees) represent 22 percent of the FRS membership. Remaining members are employed by local agencies, including all counties (23 percent), district school boards (49 percent), and community colleges (3 percent), as well as cities and special districts (4 percent) that have opted to join the FRS.

The active membership of the FRS is divided into five membership classes: the Regular Class consists of 565,276 members (87 percent of the membership); the Special Risk Class includes 68,466 members (11 percent), the Special Risk Administrative Support Class has 80 members (.012 percent), the Elected Officers' Class has 1,999 members (.31 percent), and the Senior Management Service Class has 6,751 members (1.04 percent). Each class is separately funded based upon the costs attributable to the members of that class.

Disability Benefits - The FRS provides retirement and disability benefits for state and county employees and for employees of those cities and special districts that choose to participate in the FRS. The current employer contribution rates to the FRS Trust Fund are 6.67 percent for the Regular Class and 17.37 percent for the Special Risk Class³ (the members of which include, but are not limited to, police officers, correctional officers, correctional probation officers, firefighters, emergency medical technicians, and paramedics).

Limited disability benefits are payable to FRS-covered employees for illnesses or injuries causing the individual to be totally and permanently disabled. To receive disability benefits, the individual must prove that he or she is prevented by reason of a medically determinable physical or mental impairment from rendering useful and efficient service in any regularly-established position with the employer. For injuries not occurring in the line of duty, an employee must have five to 10 years of creditable service before the disability to be eligible for this benefit. However, if the injury occurs in the line of duty, the employee qualifies for an increased disability benefit regardless of his or her years of service. The general disability benefit is 42 percent of the employee's average final compensation (AFC). The in-line-of-duty benefit for special risk employees is at least 65 percent of the AFC.⁴

Criteria for Disability Determination - Under s. 121.091(4), F.S., any member of the FRS⁵ who is *totally and permanently* disabled due to a condition or impairment of health caused by an injury or illness that occurred before the member terminated employment is entitled to disability benefits. Certain criteria must be met, including:

¹ In January 1, 1996, many cities and special districts were authorized by law to "opt out" of the FRS for new employees. Many chose to do so, and since that time, some have elected to rejoin the FRS. As of June 30, 2005, among the 151 cities participating in the FRS, there are 42 cities that have chosen to withdraw from the system and do not cover new members under the FRS.

² This number includes 15 independent special districts closed to new FRS members since January 1996.

³ Section 121.71(3), F.S.

⁴ Section 121.091(4), F.S.

⁵ Members of both the FRS Pension Plan and the FRS Investment Plan are eligible for disability coverage.

- An FRS member is eligible for in-line-of-duty disability benefits from his/her first day on the job. In contrast, the member must have 8 years of creditable service⁶ before becoming disabled in order to receive disability retirement benefits for any disability occurring other than in the line of duty.
- For a member to be deemed “totally and permanently disabled,” the disabling injury or illness must prevent him/her from “performing useful and efficient service as an officer or employee.”
- To further qualify for in-line-of-duty disability benefits, the injury or illness must have arisen out of and in the performance of work-related duties as required by the FRS employer.

Proof of disability is required, including certification by two Florida-licensed physicians⁷ that the member’s disability is total and permanent (i.e., that the member is prevented by reason of a medically determinable physical or mental impairment from engaging in gainful employment). It is the responsibility of the applicant to provide such proof. To qualify to receive the higher in-line-of-duty disability benefits, unless a legal presumption applies (such as is provided under s. 112.18, F.S.), the member must also show by competent evidence that the disability occurred in the line of duty.

Reemployment Restrictions - A service-based retiree of the FRS Pension Plan or FRS Investment Plan can work for any private employer, for any public employer not participating in the FRS, or for any employer in another state, without affecting his or her FRS benefits. However, for a full year after retirement as described below, unless otherwise eligible for a post-retirement reemployment exception, no FRS retiree is permitted to simultaneously receive FRS benefits and salary from an FRS employer:

- To terminate employment, a retiring member must be off all FRS payrolls for 1 calendar month. Any FRS retiree who returns to work for an FRS employer during the first month of retirement voids his/her retirement. All benefits must be repaid to the system and the member must submit another application and establish a later retirement date to retire.
- Any retiree who is employed by an FRS employer in the 2nd through 12th months after retirement must inform the Division of Retirement. For any months worked during the restricted period, retirement benefits must be suspended, unless the retired member qualifies for an exception, as described in the following paragraph. After the first year of retirement, there are no restrictions on reemployment. A retiree participating in the Deferred Retirement Option Program (DROP) is subject to these reemployment limitations as soon as his/her period of DROP participation ends.

⁶ Until July 1, 2001, any member who joined the FRS on or after July 1, 1980, was required to complete 10 years of creditable service to qualify for disability benefits for a disability that was not job-related. Under current law, the 10-year service requirement has been reduced to 8 years.

⁷ In special cases, out-of-state physicians may certify total and permanent disability (*see ch. 2005-134, Laws of Florida*).

After being off all FRS payrolls for 1 calendar month to meet the definition of termination, any eligible FRS retiree reemployed in a qualifying position⁸ is exempt from further reemployment limitations. In addition, limited exceptions are also available under current law for all FRS retirees who are retired for 1 calendar month and are reemployed in a qualifying position⁹ for up to 780 hours in the 2nd through the 12th month following retirement.

Disability Retirement - The law governing the FRS does not permit a disability retiree to receive disability benefits while gainfully employed. Any disability retiree will void his/her retirement by becoming gainfully employed by any employer at any time after termination. Upon returning to any type of gainful employment, public or private, the disability retiree must immediately notify the Division's Disability Determination Section of the reemployment. This restriction applies to all FRS disability retirees. Upon recovery and reemployment in any capacity, disability benefits are terminated.

Officer Malcolm Thompson - In 1997, Officer Malcolm Thompson of Kissimmee was shot several times in the head, neck, and stomach by a suspect wanted for armed robbery and carjacking. Despite his severe injuries he shot and killed the suspect.¹⁰

III. Effect of Proposed Changes:

The bill provides that a member of the Special Risk Class who is employed as a law enforcement officer, correctional officer, correctional probation officer, firefighter, emergency medical technician, or paramedic is considered totally and permanently disabled in the line of duty if he or she is prevented, by reason of a medically determinable physical or mental impairment caused by a job-related injury, from performing useful and efficient service in his or her position. The employee will receive the higher in-line-of-duty disability benefit unless the Secretary of the Department of Management Services ("administrator") can provide "competent medical evidence to the contrary." Thus, the burden of proof is shifted from the employee to the administrator, and an easier standard is created for the injured employee to meet in order to receive a higher disability benefit.

The bill authorizes reemployment of the disabled officer, firefighter, emergency medical technician, or paramedic:

- By an employer who does not participate in FRS; or
- After one calendar month of retirement, by an FRS employer.

⁸ Any FRS retiree may serve in an elective public office with renewed membership; a retired justice or judge may be employed on temporary assignment to active judicial service pursuant to Article V of the State Constitution (such justices or judges are not eligible for renewed membership and the chief justice must approve temporary assignments totaling more than 60 days per year); and FRS and TRS retirees may return to work in certain eligible positions for a district school board, the Florida School for the Deaf and the Blind, developmental research schools (university lab schools), and charter schools after 1 calendar month of retirement (or after 1 calendar month following conclusion of DROP) and simultaneously receive both salary and benefits without further limitation.

⁹ Qualifying positions include: Part-time, noncontractual adjunct instructors and phased retirement program participants with community colleges; adjunct faculty and phased retirement program participants with the State University System; substitute teachers, substitute residential instructors, or substitute nurses with the Florida School for the Deaf and the Blind; and firefighters or paramedics.

¹⁰ "Wounded Cop Kills Robbery Suspect," Miami Herald, 4 June 1997, p. 2B.

Subject to the above conditions, the disabled officer, firefighter, emergency medical technician, or paramedic may be reemployed in *any position* other than the one he or she was employed at the time of disability retirement. This allows an employee to return to work in a different position within the same job classification. Thus, a “law enforcement officer” could return to work with the same employer as a “law enforcement officer” as long as that officer was assigned to a different position. The employee would continue to receive his or her in-line-of-duty disability retirement benefits while receiving a salary from subsequent employment. Thus, the bill establishes a different disability determination criteria for certain FRS Special Risk Class members. Current law describes “total and permanent disability” for all FRS members as being “if, in the opinion of the administrator, he or she is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee.”¹¹

The bill increases the retirement contribution rate paid by special risk employers for members of the Special Risk Class, providing for payment of an additional 0.31 percent of gross compensation to fund the benefit improvement.

Finally, the bill provides a short title (the “Officer Malcolm Thompson Act”) and includes a declaration of important state interest.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill requires cities and counties to expend funds or take action requiring the expenditure of funds. Thus it falls within the purview of Section 18(a), Article VII, Florida Constitution which provides that cities and counties are not bound by certain general laws. However, the bill meets the exception specified in the constitution because the Legislature has determined the bill fulfills an important state interest and the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 14, Art. X of the State Constitution - Since 1976, the Florida Constitution has required that benefit improvements under public pension plans in the state of Florida must be concurrently funded on a sound actuarial basis, as set forth below:

¹¹ Section 121.0911(4)(b), F.S.

SECTION 14. State retirement systems benefit changes.—A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Part VII of ch. 112, Florida Statutes - Section 14, Art. X, of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the “Florida Protection of Public Employee Retirement Benefits Act,” which establishes minimum standards for the operation and funding of public employee retirement systems and plans in the state of Florida. The key provision of this act states the legislative intent to “prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.”

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill increases the FRS contribution rates for the Special Risk Class from 17.37 percent to 17.68 percent (0.31 percent). This rate increase translates to a total first-year cost of \$9,962,000, and increasing costs each year thereafter. Costs are assumed to increase an additional four percent each year. The bill does not appropriate additional funding; therefore, the additional costs will be absorbed within existing resources.

The FRS has projected that in the bill will have the following fiscal impact on **local governments**:

Year 1 FY 06/07	Year 2 FY 07/08	Year 3 FY 08/09
\$7,176,000	\$7,463,000	\$7,762,000

The FRS has projected that the bill will have the following fiscal impact on **state government**:

Year 1 FY 06/07	Year 2 FY 07/08	Year 3 FY 08/09
\$2,786,000	\$2,897,000	\$3,012,880

VI. Technical Deficiencies:

None.

VII. Related Issues:

In its analysis of SB 92 the Department of Management Services identified a number of specific concerns relative to the bill.¹²

By making it significantly easier for certain members of one class to both obtain and keep disability benefits, the bill has the potential to encourage fraud and abuse, the costs for which would ultimately be borne by the taxpayers of Florida. Effective elimination of the reemployment prohibition would exacerbate these problems. The Division has inadequate resources to follow the future careers of reemployed disability retirees and enforce this provision. At minimum to discourage potential abuse, it is recommended that the Legislature consider amending the bill to limit any permitted subsequent employment to work with an employer other than the one for whom the member worked when disabled. This bill would require disability "from performing useful and efficient service in the position held." Without further clarification there could be many interpretations of this statement.

By modifying qualification requirements to shift the burden of proof from the affected member to the System Administrator, the bill makes it far less likely that a disability application could be denied. The System Administrator would have to provide competent evidence to show that the applicant could indeed perform the duties of his/her current job (and would need considerable expertise on numerous and varied types of jobs to be in a position to do this). This would be exceedingly difficult, if not impossible. It is recommended that the Legislature consider amending the bill to reinstate the present proof requirement by eliminating the shift of burden of proof from the member to the administrator.

As written, the bill does not cover all employee groups in the Special Risk Class¹³, effectively creating unequal subclasses within the Special Risk Class. Excluded groups could view this as discrimination, which could lead to dissension. Members of the Special Risk Class who are not included in the group proposed to be covered by the bill could argue that they should have been covered (members of other classes who are disabled due to a job-related injury could also seek coverage). The bill would set a precedent for other groups to seek equal treatment, whether they are Special Risk Class members not covered by SB 92 or members of other classes who are injured in the line of duty. Additionally, if challenged, creating different benefit structures in a membership class without creating specific subclasses could jeopardize the status of the FRS as a qualified plan under the Internal Revenue Code.

¹² Department of Management Services, 2006 Substantive Bill Analysis for SB 92, October 14, 2005.

¹³ The special disability provision would apply to members of the Special Risk Class who are law enforcement officers, correctional officers, or correctional probation officers, firefighters, paramedics, or emergency medical technicians. The benefit improvements would not be available to persons included in the Special Risk Class by virtue of employment in a correctional or forensic institution or as a youth custody officer or a forensic worker.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

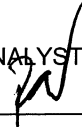
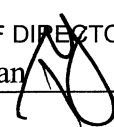
BILL: SB 1032

INTRODUCER: Senator Margolis

SUBJECT: Affordable Housing

DATE: January 24, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vickers 	Yeatman 	CA	Pre-meeting
2.			TA	
3.				
4.				
5.				
6.				

I. Summary:

The Elderly Housing Community Loan (EHCL) Program is a loan program within the State Apartment Incentive Loan Program in which a portion of the funds are reserved to sponsors of housing for the elderly to provide for specific repairs and improvements. This bill reduces the minimum match requirement that a sponsor must commit to in order to receive a loan under the EHCL Program from 15 percent to 5 percent of the loan amount.

This bill substantially amends section 420.5087 of the Florida Statutes.

II. Present Situation:

Section 420.5087, F.S., creates the State Apartment Incentive Loan (SAIL) Program, which is designed to stimulate production of affordable, multi-family rental housing for very-low income individuals and families. The SAIL program provides first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons. The Florida Housing Finance Corporation is responsible for the management of this program.

Subsection (3) of s. 420.5087, F.S., provides for the reservation of SAIL funds for specified tenant groups. The designated tenant group categories include: commercial fishing workers and farm workers; families; persons who are homeless; and elderly persons. Presently, 24 percent of the total amount is reserved for the elderly.¹ Ten percent of the amount reserved for the elderly

¹ Section 420.503(19), F.S., provides "housing for the elderly" means, for purposes of s. 420.5087(3)(d), any nonprofit housing community that is financed by a mortgage loan made or insured by the United States Department of Housing and Urban Development under s. 202, s. 202 with a s. 8 subsidy, s. 221(d)(3) or (4), or s. 236 of the National Housing Act, as

must be allocated to the Elderly Housing Community Loan Program (EHCL) to provide loans for building preservation, health, or sanitation repairs or improvements which are required by federal, state, or local regulation or code, or life safety or security-related repairs or improvements to such housing. Under the EHCL Program, sponsors are required to match the loan amount received at a rate of 15 percent. Funds received from matching are used to supplement the loan amount received to pay the cost of repair or improvement for which these funds are available. Prior to 2005, loans under the EHCL Program were capped at \$200,000. During the 2005 Regular Session, the Legislature increased the maximum loan amount from \$200,000 to \$750,000.² The increase in the maximum loan amount had the practical effect of increasing the potential match requirement from \$30,000 to \$112,500

According to the Florida Housing Finance Corporation, the match requirement is used to leverage state funds and make more fiscally prudent investments. Prior to the increase in the available loan amount, sponsors were awarded additional points during the loan application process for exceeding the minimum match requirement by a certain percentage. With the current increased loan amount and match rate, this process is no longer being used. However, under general operating policy, sponsors are still encouraged to match at the highest percentage possible, which can exceed the minimum percentage amount set in statute.

III. Effect of Proposed Changes:

This bill amends s. 420.5087, F.S., to reduce the minimum match requirement that a sponsor of housing for the elderly must commit to in order to receive a loan under the SAIL/EHCL program. Reducing the matching requirement from 15 percent to 5 percent, as provided in this bill, would result in a maximum required match amount of \$37,500.

A representative of the Florida Association of Homes for the Aging³ indicated that the bill will make the EHCL Program more user friendly since most of the facilities that apply for loans under the EHCL Program are financially constrained non-profits that are financed through the Department of Housing and Urban Development (HUD) and are subject to HUD's restrictions in raising rents. The Florida Association of Homes for the Aging suggests that at the higher 15 percent match rate, many sponsors that apply for the EHCL Program are finding it difficult to make use of the higher available loan amounts and that reducing the match rate would allow more sponsors to take advantage of the higher loan amounts now available.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

amended, and that is subject to income limitations established by the United States Department of Housing and Urban Development, or any program funded by the Rural Development Agency of the United States Department of Agriculture.

² Ch. 2005-102, L.O.F., (SB 724).

³ Mary Ellen Early, Senior Vice President of Public Policy

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill may have an economic impact on a private sector apartment owner that qualifies under the EHCL Program by reducing the match amount required to qualify for a loan under the program, allowing them to take advantage of higher loan amounts.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL: SB 1048

INTRODUCER: Senator Sebesta

SUBJECT: Affordable Housing

DATE: January 26, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vickers <i>Rav</i>	Yeatman <i>AY</i>	CA	Pre-meeting
2.	_____	_____	TA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill revises a number of provisions relating to affordable housing programs administered by the Florida Housing Finance Corporation. Most notably, the bill increases the minimum population required to meet the large county designation for purposes of the State Apartment Incentive Loan Program from 500,000 to 825,000. The bill also increases the income limitation applicable to the Florida Homeownership Assistance Program. Finally, the bill authorizes local governments to utilize federal data in setting limits of housing purchased through the State Housing Initiative Partnership Program.

This bill substantially amends the following sections of the Florida Statutes: 420.503; 420.5087; 420.5088; and 420.9075. This bill repeals section 420.37 of the Florida Statutes.

II. Present Situation:

The Florida Housing Finance Corporation (FHFC) or "Florida Housing" was established to increase the supply of safe affordable housing for individuals and families with very low to moderate incomes by stimulating investment of private capital and encouraging public and private-sector housing partnerships. Specifically, the FHFC provides incentives and assistance to help meet the housing needs of Florida's low and moderate income residents, including those with special needs such as the elderly, the disabled, homeless individuals and families, farm workers, and commercial fishing workers. The FHFC administers a variety of homeownership and multifamily development programs, including:

First Time Homebuyer Program - Florida Housing issues bonds under the Single Family Mortgage Revenue Bond Program and the proceeds from these bonds are used to originate 30-year mortgage loans through the First Time Homebuyer Program. First-time homebuyers then

benefit from lower mortgage interest rates due to the tax-exempt status of the bonds. Eligible borrowers must meet certain criteria such as the first-time homebuyer requirement, as defined by the Internal Revenue Code, credit worthiness, and an appropriate income level, not exceeding program limits.

HOME Investment Partnerships – This program provides non-amortizing, low interest rate loans to developers of affordable housing who acquire, rehabilitate, or construct housing for low income families. Loans are offered through FHFC's annual Universal Cycle at the simple interest rate of zero percent to nonprofit applicants and three percent to for-profit applicants. The HOME program is generally designed for smaller developments in rural areas.

The Homeownership Loan Program – This program allows developers to apply for funding through either the HOME Investment Partnerships program or the Homeownership Assistance Program (HAP). Funding is obtained through a competitive process to assist with the construction of homes or to provide purchase assistance to the homebuyer for up to 25 percent of the purchase price of the home. The HOME program is a federal program available to eligible for-profit and nonprofit developers, local housing agencies, community housing development organizations, and public housing authorities. HAP is a state funded program tailored to nonprofit organizations and nonprofit sponsors, as well as community based organizations.

State Apartment Incentive Loan (SAIL) – The SAIL program provides low-interest loans on a competitive basis to developers of affordable rental housing each year. SAIL funds provide gap financing that allows developers to obtain the full financing needed to construct affordable multifamily units. SAIL dollars are available to individuals, public entities, and nonprofit or for-profit organizations for the construction or substantial rehabilitation of multifamily units. Special consideration is given to properties that target specific demographic groups such as the elderly, homeless people, farmworkers, and commercial fishing workers.

State Housing Initiatives Partnership (SHIP) – This program provides funds to local governments on a population based formula as an incentive to produce and preserve affordable housing for very low, low, and moderate income families. These funds are derived from the collection of documentary stamp tax revenues, which are deposited into the Local Government Housing Trust Fund. SHIP funds are distributed on an entitlement basis to all 67 counties and 48 Community Development Block Grant entitlement cities in Florida. The minimum allocation per county is \$350,000. SHIP dollars may be used to fund emergency repairs, new construction, rehabilitation, down payment and closing cost assistance, impact fees, construction and gap financing, mortgage buy-downs, acquisition of property for affordable housing, matching dollars for federal housing grants and programs, and homeownership counseling.

III. Effect of Proposed Changes:

Section 1 repeals s. 420.37, F.S. This section specifies additional powers of the FHFC relative to the Low-income Emergency Home Repair Program. According to FHFC, this section is unnecessary as this program is administered by the Department of Community Affairs pursuant to s. 420.36, F.S.

Section 2 amends s. 420.503, F.S., to revise the definition of “farmworker” to reference the corresponding federal definition.¹ Incorporating the federal definition is intended to maximize opportunities for the use of federal funds for eligible housing initiatives.

Section 3 amends s. 420.5087, F.S., to increase the minimum population required to meet the large county designation for purposes of the SAIL Program from 500,000 to 825,000. Currently, this section segregates large, medium and small counties by population for the purpose of providing funds to sponsors of affordable housing to very-low-income persons. When the SAIL Program was first created in 1988, there were seven counties that met the population minimum of 500,000 for SAIL fund allocations in the large county category.² This grouping policy was initially established for two reasons. The first reason was to group the large counties in a manner that mirrored the single county bond regions for the local housing finance authorities as laid out in their statute. The second reason was to create county groupings that were as homogenous as possible in such areas as public transportation, need, and infrastructure.

Until recently, no other counties in Florida have neared the minimum population for large county designation. In 2004, however, Polk County barely exceeded the 500,000 benchmark for large county designation. Based on the 2004 Shimberg Center for Affordable Housing study, Polk County has only 2.4 percent of the state’s need, unlike the other large counties, which each had at least 5 percent of the state’s need (defined as households below 60 percent average median income with a housing cost burden greater than 40 percent). According to the 2004 Statistical Abstract, Duval County, the smallest of the original seven large counties, has a population of 826,279. Miami-Dade (the largest in the state) has a population of 2,345,932 people. According to FHFC, it is difficult to set policies that apply to counties of the larger size that also work well for counties such as Polk and Brevard with just over 500,000 people, and which vary dramatically in their infrastructure and demographics.

Section 4 amends s. 420.5088, F.S., to increase the income limitation applicable to the Florida Homeownership Assistance Program. Currently, this section mandates that 30 percent of the homes in single family developments financed through HAP be sold to individuals earning 50 percent of the average median income or less. Historically, very few families earning 50 percent of the average median income or less can support a mortgage especially with the rising sale price of homes in Florida. The bill amends this section to increase the cap from 50 percent to 65 percent.

Section 5 amends s. 420.9075, F.S., to allow local governments to utilize federal data in setting limits of housing purchased through SHIP. Currently, local governments rely on an independent study to determine area median purchase prices which translates into calculating the sales price or value limits of new and existing housing that can be purchased using funds from SHIP. The bill allows local governments to use average purchase price limits established by the United States Department of Treasury as an alternative to relying on an independent study of area

¹ 7 CFR 3560.11 defines a *domestic farm laborer* as a person who, consistent with the requirements in Sec. 3560.576(b)(2), receives a substantial portion of his or her income from farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico or the Virgin Islands after being legally admitted for permanent residence. This definition may include the immediate family members residing with such a person.

² Applicable counties include: Miami-Dade, Broward, Palm Beach, Orange, Hillsborough, Pinellas, and Duval.

median purchase prices. This will allow local governments to have more tools available to adapt to market conditions and most effectively use state housing resources. Further, low and moderate income citizens buying a home will have more flexibility on the price of home they purchase.

Section 6 provides that this bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee



BILL: SB 1088

INTRODUCER: Senator Siplin

SUBJECT: Three Kings Day

DATE: January 24, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vickers 	Yeatman 	CA	Pre-meeting
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

This bill designates January 6 as "Three Kings Day" and authorizes local governments to annually issue a proclamation commemorating the occasion, and calls upon the residents of the State of Florida to observe the occasion.

This bill creates section 683.33 of the Florida Statutes.

II. Present Situation:

Chapter 683, F.S., relates to legal holidays and special observances. Section 683.01, F.S., designates 21 legal holidays, to include Good Friday and Christmas. Other provisions in ss. 683.04-683.25, F.S., designate special observances or explain the significance of certain legal holidays.

Section 683.19, F.S., authorizes chief circuit judges to designate Rosh Hashanah, Yom Kippur, and Good Friday as legal holidays for the courts within their respective judicial circuits.

Three Kings Day (Dia de los Reyes) is celebrated 12 days after Christmas on January 6. Also known as the Epiphany, Three Kings Day is a celebration that commemorates the Biblical story of the three kings (or wise men) who followed the star of Bethlehem to bring gifts to the Christ child. This holiday is widely celebrated in the Hispanic community, especially by Mexican-Americans.

III. Effect of Proposed Changes:

Section 1 creates s. 683.33, F.S., which designates January 6 of each year as “Three Kings Day” and provides that local governments may annually issue a proclamation commemorating January 6 as “Three Kings Day” and calling upon the residents of the state to observe the occasion.

Section 2 provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill amends s. 683.33, F.S., to designate January 6 of each year as "Three Kings Day." Furthermore, local governments are authorized to annually “issue a proclamation commemorating January 6 as Three Kings Day and calling upon the residents of this state to observe the occasion.”

In its current form, this bill could be challenged as a violation of the Establishment Clause of the U.S. Constitution.

The 1st Amendment to the U.S. Constitution provides, in part, that “Congress shall make no law respecting an establishment of religion...” This provision has generally been interpreted to restrict the federal, state, and local governments from promoting or affiliating itself with any religious doctrine or organization, discriminating among persons on the basis of their religious beliefs and practices, delegating a governmental power to a religious institution, and involving itself too deeply in such an institution’s affairs.¹

To evaluate whether laws or policies violate these restrictions, the courts have applied the *Lemon* test,² which requires that the challenged practice:

- have a valid secular purpose,
- not have the effect of advancing or inhibiting religion, and

¹ *County of Allegheny v. ACLU*, 492 U.S. 573, 589, 109 S.Ct. 3086, 3099, 106 L.Ed.2d 472 (1989).

² *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971).

- not foster excessive government entanglement with religion.

While the courts have deviated in limited circumstances from the *Lemon* test, the test “is often maligned...but it is even more often applied.”³ However, the courts recognize that “Establishment Clause challenges are not decided by bright-line rules, but on a case-by-case basis with the result turning on the specific facts.”⁴

This test was most recently applied in *Glassroth v. Moore*,⁵ where the 11th Federal Circuit Court of Appeal ruled the Chief Justice of the Alabama Supreme Court violated the Establishment Clause by placing a monument to the Ten Commandments in the rotunda of the Alabama State Judicial Building. The court held that this action had a non-secular purpose, and that the monument had the primary effect of endorsing religion.

The court has also applied the *Lemon* test to state actions that designated Good Friday as a legal holiday for state employees. The 7th Federal District Court ruled that this action did not violate the Establishment Clause because the holiday was based on several secular justifications.⁶

Local government actions related to religious holidays have also been addressed by Florida courts. In 1994, the 2nd District Court of Appeal of Florida upheld a Clay County ordinance outlawing the sale of alcohol on Christmas Day and Christmas night.⁷ The court held that Christmas, notwithstanding its deep religious significance for many, also has secular traditions which local government is free to acknowledge, without offending the constitutions either of Florida or of the United States. The court was “unable to discern any religious principle that the ordinance under challenge endorses.” Furthermore, the ordinance was not found to advance religion or any particular religion.

To the extent that this bill promotes a non-secular purpose, it is subject to challenge under the *Lemon* test, and may be declared unconstitutional.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

³ *Glassroth v. Moore*, 335 F.3d 1282 (2003), *cert. denied*, 1245 S.Ct. 497 (2003)

⁴ *Id.* At 1288.

⁵ *Id.* At 1295.

⁶ *Bridenbaugh v. O'Bannon*, 185 F.3d 796 (1999).

⁷ *Silver Rose Entertainment, Inc., v. Clay County*, 646 So.2d 246 (Fla. 1st DCA 1994). It is also important to note that the court held this ordinance did not violate Art. 1, s. 2 of the State Constitution, which is generally regarded as more restrictive than the Establishment Clause in the U.S. Constitution.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL: SB 1112

INTRODUCER: Senator Bennett

SUBJECT: Licensing

DATE: January 27, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin <i>amh</i>	Yeatman <i>AY</i>	CA	Pre-meeting
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

The bill requires state agencies to include a citation to the applicable rule on which the issuance or denial of a license is based in its written notice to the applicant. It requires a local government to provide written notice to each applicant for a license of its intended action on the application. The notice must also state with particularity the grounds or basis, including a citation to the applicable ordinance, on which the local government will issue or deny the license.

This bill amends section 120.60 of the Florida Statutes. It also creates sections 125.022 and 166.033, of the Florida Statutes.

II. Present Situation:

Comprehensive Planning and Zoning

The Local Government Comprehensive Planning and Land Development Regulation Act, ss. 163.3164 – 163.3247, F.S., requires local governments to plan for future development and growth through the adoption and amendment of their comprehensive plans. Local governments enjoy broad constitutional and statutory powers to plan for and regulate land use. A local government's comprehensive plan and land use classifications dictate the allowable land uses for each parcel.

Each local government is required to adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.¹ Section 163.3164(23), F.S., defines the term "land development regulations" as ordinances enacted by local governments relating to any aspect of development, including zoning, rezoning, subdivision, building

¹ S. 163.3202(1), Fla. Stat. (2005).

construction, sign regulations, or any other regulations controlling land development. A substantially affected person, as defined in ch. 120, F.S., may challenge a land development regulation on the basis that it is inconsistent with the local government's comprehensive plan.² Citizens also enjoy standing to enforce a local comprehensive plan through challenging the consistency of a development order with that plan.³

Local governments issue various licenses and permits to regulate different types of activities such as the following: building permits, irrigation, landscaping, specialty permits, environmental, business activities, and special events. Applications are available from the local government. If the applicant meets the requirements of the ordinance that governs the permit or license, the local government may issue the permit or license. Currently, there is no statutory requirement that a local government provides written notice to the applicant of its intent to issue or deny an application for a license or permit. There is also no requirement that the local government provide written documentation to the applicant which specifies the ordinance relied on by the local government in determining whether to issue or deny the permit or license.

Section 120.60, F.S., provides requirements relating to licensing for agencies subject to the Administrative Procedure Act. For purposes of ch. 120, F.S., the term "license" means a "franchise, permit, certification, registration, charter, or similar form of authorization required by law," but does not include a license issued primarily for revenue and for which the issuance is a ministerial act.⁴ Section 120.60, F.S., prescribes timeframes for reviewing an application, requesting additional information, and taking action on the application. This provision requires an agency to provide written notice to each applicant for a license that the agency intends to grant or deny, or has granted or denied, the application.⁵ The required written notice must state with particularity the grounds or basis for the issuance or denial of the license, except when the issuance is a ministerial act.⁶

III. Effect of Proposed Changes:

Section 1 amends s. 120.60, F.S., to require those agencies that are subject to ch. 120, F.S., to include a citation to the applicable rule on which the issuance or denial of a license is based in the written notice of intended agency action sent to the applicant.

Section 2 amends s. 125.022, F.S., to require a county to provide written notice to each applicant for a license of its intended action on the application. The notice must state with particularity the grounds or basis, including a citation to the applicable ordinance, on which the county will issue or deny the license. The term "license" has the same meaning as in s. 120.52, F.S.

Section 3 amends s. 166.033, F.S., contains the same provisions as section 3 of this bill, but these provisions apply to municipalities.

Section 4 provides this act shall take effect upon becoming a law.

² S. 163.3213, Fla. Stat. (2005).

³ S. 163.3215, Fla. Stat. (2005).

⁴ S. 120.52(9), Fla. Stat. (2005). The term "ministerial" refers to an action that does not involve discretion.

⁵ S. 120.60(3), Fla. Stat. (2005).

⁶ S. 120.60(3), Fla. Stat. (2005).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill may provide a cost savings to those seeking streamlined permitting for various activities. Because a local government or state agency must specify the rule or ordinance that is the basis for its intended action on an application, the applicant may be able to correct any compliance issues sooner.

C. Government Sector Impact:

This bill requires state agencies subject to ch. 120, F.S., to include a citation to the rule that is the basis for the issuance or denial of a license. Because ch. 120, F.S., already requires an agency to send written notice to the applicant of its intended action on the application, there is likely no additional cost as the result of this bill.

Under this bill, local governments must provide written notice to an applicant of its intended action on an application for a license, including a citation to the ordinance on which the issuance or denial is based. Some local governments do not currently provide the applicant with a written notice of their intent to issue or deny the license. The cost of providing such notice has not been determined.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL: SPB 7082

INTRODUCER: Community Affairs Committee

SUBJECT: Growth Management

DATE: February 1, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin <i>Ammh</i>	Yeatman <i>AY</i>		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

The bill corrects cross-references and revises appropriations glitches in CS/CS/CS for SB 360 that was enacted in 2005. It also increases the membership of the Century Commission, provides additional criteria for appointing members, and extends the deadline for making the appointments.

This bill amends the following sections of the Florida Statutes: 163.3177, 163.3180, 163.3184, 163.3247, 201.15, 339.2819, 1013.65, and 1013.78.

II. Present Situation:

In 2005, the Legislature enacted CS/CS/CS for SB 360 (SB 360) to provide the critical infrastructure and planning needed to accommodate Florida's continued population growth. The bill created and amended numerous provisions relating to school, water and transportation concurrency, the development of a regional impact program and other significant portions of the local government comprehensive planning process. It also appropriated \$1.5 billion in fiscal year 2005-2006 for infrastructure funding for transportation, water and schools, with recurring funding of \$750 million annually thereafter. Because of the timing and magnitude of these growth management legislative changes, the bill contained glitches.

This committee's interim project report 2006-108 focused on identifying glitches in the bill and any changes necessary to fully implement the provisions of the bill. Staff solicited comments and met with various stakeholders and interested parties. Staff categorized the comments received from stakeholders and those comments are included in the interim project report. Staff has identified glitches that should be included in a glitch bill for the 2006 Regular Session and at the direction of the committee, staff has prepared SPB 7082 to address those glitches. Although

other issues and concerns have been identified by staff and stakeholders, many of these may be resolved during the implementation phase as the provisions of the bill take effect. Any significant changes at this point may further complicate efforts to fully implement the bill.

Century Commission for a Sustainable Florida

Section 11 of SB 360 created the 15-member Century Commission for a Sustainable Florida with its members to be appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Governor designates the chair of the commission. The membership should represent various interests, including local governments, school boards, developers and homebuilders, the business community, the agriculture community, the environmental community, and other appropriate stakeholders. The commission is charged with developing a shared image of the state and its developed and natural areas and recommending policies or strategies to achieve that vision.

The commission has met twice since its inception and has five additional meetings scheduled for 2006. Beginning January 16, 2007, the Century Commission will send an annual written report to the Governor and the Legislature. The President of the Senate and the Speaker of the House of Representatives are required to create a joint select committee in 2007 to review the findings and recommendations of the commission.

The Governor signed SB 360 into law on June 24, 2005. However, three funding provisions were vetoed. Section 27 of this bill appropriated \$250,000 in nonrecurring general revenue to support the commission. Also, section 40 of the bill appropriated \$250,000 from the Grants and Donations Trust Fund in the Department of Community Affairs (DCA) annually to support the commission. One of the provisions vetoed by the Governor was the \$250,000 recurring funding for the commission in section 40. It is staff's recommendation that these funds be reappropriated for transportation needs.

Transportation Funding in SB 360

The Strategic Intermodal System (SIS) consists of statewide and interregionally significant transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida. As such, the SIS is the primary focus of state transportation resource investment. SB 360 appropriated additional funding for state transportation projects. Specifically, section 27 of the bill appropriated \$575 million in nonrecurring general revenue for the 2005-2006 fiscal year for transportation. From this \$575 million, \$200 million was appropriated for the purposes of SIS. Although this section refers to \$575 million, it actually appropriated \$600 million for various transportation projects. It was determined that the \$25 million error was in the SIS funding and it should be reduced from \$200 million to \$175 million.

High Growth District Capital Outlay Assistance Grant Program

SB 360 created the High Growth District Capital Outlay Assistance Program in s. 1013.78, F.S., to provide funds for qualifying high student enrollment growth school districts. The bill provided additional funding for school construction to districts meeting the program's criteria. The eligibility criteria for this program includes a requirement that the school district must have levied the full 2 mills of nonvoted discretionary capital outlay millage for each of the past 4 fiscal years. Under the criteria, a district must have also equaled or exceeded twice the statewide

average of growth in capital outlay FTE students over this same 4-year period. Section 26 of SB 360 appropriated \$30 million in recurring revenue for this program. Also, section 27 of the bill appropriated \$30 million in nonrecurring general revenue for fiscal year 2005-2006. The Governor vetoed the \$30 million recurring funding. These monies remain in the Public Education Capital Outlay and Debt Service Trust Fund (PECO) in the Department of Education. It is staff's recommendation that these monies be reappropriated for education spending.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3177, F.S., to correct a cross-reference.

Section 2 amends s. 163.3180, F.S., to correct cross-references and terminology.

Section 3 amends s. 163.3184(17), F.S., to correct a cross-reference.

Section 4 amends s. 163.3247(3)(a), F.S., to add 7 members to the 15-member Century Commission for a total of 21 members. It adds language to ensure the membership reflects the racial, ethnic, and gender diversity, as well as the geographic distribution, of the state's population. It also extends the date for appointments to August 1, 2006.

Section 5 amends s. 201.15, F.S., to delete language distributing \$250,000 to the Grants and Donations Trust Fund in DCA for the Century Commission.¹ This \$250,000 is used to increase the amount appropriated in SB 360 to the State Transportation Trust Fund in the Department of Transportation by \$250,000 for a total of \$542 million.

It also deletes language that distributed \$30 million in recurring funding for the High Growth District Capital Outlay Grant Assistance Program.² This \$30 million in recurring funding is then used to increase the amount appropriated in SB 360 as recurring funding that goes into PECO for the Classrooms for Kids Program from \$75 million to \$105 million.

It corrects a cross-reference.

Section 6 amends s. 201.15, F.S., to conform the language to section 5 of this bill. This section contains the changes made in section 5 and the changes made by section 1 of ch. 2005-92, L.O.F., that take effect on July 1, 2007.

Section 7 amends s. 339.2819(4)(a), F.S., to correct a cross-reference.

Section 8 amends s. 1013.65(2)(a), F.S., to correct an error in SB 360 that appropriated \$75 million to the Public Education Capital Outlay and Debt Service Trust Fund (PECO) in the Department of Education but only transferred \$41.75 million to the Classrooms for Kids program. The language is amended to transfer \$105 million which reflects the increase of \$30 million for the High Growth District Capital Outlay Assistance Grant Program that was vetoed.

¹ This \$250,000 in recurring funding was vetoed by the Governor.

² This \$30 million in recurring funding was vetoed by the Governor.

Section 9 amends s. 1013.78, F.S., to reflect that funds for the High Growth District Capital Outlay Assistance Grant Program were appropriated in SB 360 and not the General Appropriations Act.

Section 10 appropriates and distributes \$250,000 from the Grants and Donations Trust Fund in DCA on a nonrecurring basis for the 2005-2006 fiscal year for the purposes of SIS.

Section 11 reduces the \$200 million appropriated in section 27 of SB 360 for the purposes of SIS to its intended \$175 million.

Section 12 appropriates \$30 million from the PECO fund in the Department of Education on a nonrecurring basis for fiscal year 2005-2006 for the purposes of the Classrooms for Kids Program.

Section 13 provides effective dates.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill provides an additional \$250,000 in transportation funding that was previously appropriated to support the Century Commission.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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